

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

J. JOHN MARSHALL, ESTATE OF  
MARJORIE MARSHALL, and  
KIMBERLY WILEY

Plaintiffs,

v.

No. 3:11 CV 332

JP MORGAN CHASE BANK, AMERIPRISE  
BANK, FIDELITY NATIONAL FIELD  
SERVICES, INC., JAKK MORTGAGE  
COMPANY, LPS, FIELD SERVICES, ROBERT  
HASBERGER, CITY OF ELKHART, CHIEF  
DALE PFLIBSEN, CPL. MICHAEL  
WINDMILLER, PTLMN. BRANDON  
ROUNDTREE, SGT. TRAVIS SNIDER,  
PTLMN. MICHAEL JANIS,

Defendants.

**ORDER**

On May 2, 2013, United States Magistrate Judge Christopher A. Nuechterlein issued a written report and recommendation regarding defendants the City of Elkhart, Chief Dale Flibsen, Cpl. Michael Windmiller, Ptlmn. Brandon Roundtree, Sgt. Travis Snider, and Ptlmn. Michael Janis's ("defendants") motion to dismiss plaintiffs' suit for failure to comply with the court's January 30, 2013 order regarding discovery responses. (DE # 77.) No objections to Magistrate Judge Nuechterlein's report and recommendation have been filed, and the time to file any objections has now passed. Therefore, the court accepts and adopts Magistrate Judge Nuechterlein's report and recommendation and hereby orders that defendants' motion (DE # 57) be **DENIED**. (DE # 77 at 6.)

Despite recommending that the court deny defendants' motion to dismiss plaintiffs' suit, Magistrate Judge Nuechterlein did recommend that plaintiffs' counsel be ordered to pay the reasonable expenses, including attorney's fees, incurred by defendants in litigating their motion to dismiss. (DE # 77 at 6-7.) The court also adopts this recommendation. Defendants are **ORDERED** to file, on or before June 20, 2013, an itemization of its costs and fees, including attorneys' fees, incurred in litigating the motion to dismiss (DE # 57), with any response to be filed by plaintiffs on or before July 10, 2013.

Finally, Magistrate Judge Nuechterlein recommended that plaintiffs be advised that any future delays without leave of court will demonstrate that lesser sanctions have proven ineffective, and may result in dismissal of plaintiffs' suit under RULE 41(b). (DE # 77 at 7.) As Magistrate Judge Nuechterlein correctly pointed out in his report and recommendation, plaintiffs have failed to comply with court orders (*id.* at 3) and failed to respond to various motions from multiple defendants (*id.* at 2). Additionally, when plaintiffs have responded to motions, the responses have often been untimely (*id.*), and plaintiffs have failed to respond to the arguments in defendants' motions (*id.*). This amounts, as Magistrate Judge Nuechterlein found, at the very least, to a clear record of delay. (*Id.* at 6.) And, as Magistrate Judge Nuechterlein noted in his report and recommendation, "future delays in this case cannot be tolerated." (*Id.* at 7.) Therefore, the court also adopts Magistrate Judge Nuechterlein's recommendation on this issue,

and plaintiffs are **WARNED** that any future delays without leave of court may subject plaintiffs' suit to dismissal under RULE 41(b).

**SO ORDERED.**

Date: May 31, 2013

s/James T. Moody  
JUDGE JAMES T. MOODY  
UNITED STATES DISTRICT COURT